%86

8242-397-787

FORM NLRB-877

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERIPRIDE SERVICES, INC. D/B/A EDIS INDUSTRIAL LAUNDRY

Employer

and

CASE 24-RC-8674

UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901, IBT

Petitioner

DATE OF MAILING August 10, 2010

AFFIDAVIT OF SERVICE OF

DECISION AND DIRECTION OF ELECTION

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by postpaid regular mail upon the following persons, addressed to them at the following addresses:

Ameripride Services, Inc. dba
Edis Industrial Laundry
Lourdes Rodríguez, Representative
PO Box 2850
Carolina PR 00984

Unión de Tronquistas de Puerto Rico, Local 901, IBT Argenis Carrillo, Representative 352 Del Parque Street Santurce PR 00912 Juan Casellas, Esq. PO Box 195287 San Juan PR 00919-5287

Subscribed and sworn to before me this 10th day

of August, 2010.

DESIGNATED AGENT - MM

NATIONAL LABOR RELATIONS BOARD

Z0.9

NER - Kediou St

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 24

AMERIPRIDE SERVICES, INC. D/B/A EDIS' INDUSTRIAL LAUNDRY'

Employer

and

Case 24-RC-8674

UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901, IBT

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, 29 U.S.C. § 151 et. seq. (hereinafter "the Act") as amended, a hearing was held on July 20, 2010, before a hearing officer of the National Labor Relations Board, herein the Board, to determine whether a question concerning representation exists, and if so, to determine the appropriate unit for collective bargaining. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.²

¹ The Employer's name was changed pursuant to a stipulation signed by the parties and made a part of the record (B. Ex. #2).

The Employer and the Petitioner each filed briefs in support of their position which have been duly considered. Upon the entire record in this proceeding the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

b. The record reflects that the employer, Ameripride Services, Inc., d/b/a Edis Industrial Laundry is a corporation established under the laws of Delaware, which is engaged in the operation of an industrial laundry within the Commonwealth of Puerto Rico. Within the last twelve (12) months, a representative period, of its operations generally, the

1. THE PETITIONED UNIT AND PARTIES' POSITIONS

The Petition seeks to include in the Unit all office clerical employees employed by the Employer at its facility in Carolina, Puerto Rico, and excludes all other employees, supervisors and guards as defined in the Act. The hearing was held on the Employer's request to exclude the classification of Human Resources/Payroll Clerk (HR/PC) from the Unit on grounds that it is a confidential position. The Union argued, to the contrary, that the position involves typical clerical duties, not of a confidential nature within the meaning used by the Board, and that it should therefore be included in the Unit.

II. THE ISSUES

1. Whether the Human Resources/Payroll Clerk should be excluded from the Unit, on grounds that it is a confidential position.

III. FACTS

A. The Employer's Operations

The Employer, Ameripride Services, Inc. d/b/a Edis Industrial Laundry, (hereinafter referred to as the "Employer" or "Edis") is a corporation engaged in the operation of an industrial laundry within the Commonwealth of Puerto Rico. It has approximately 63 employees including production employees, office employees,

Employer derived gross revenues valued in excess of \$250,000, and purchased and received materials exceeding \$50,000 directly from points and places located outside the Commonwealth of Puerto Rico and caused them to be shipped to its facility in Puerto Rico.

c. Based upon the facts in section b above, I find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

d. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

e. There is no current and effective collective bargaining agreement covering the employees in the unit sought in the petition.

f. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of section 9(c) (1) and section 2(6) and (7) of the Act.

managers and supervisors. There are approximately 6 employees in the petitioned-for Unit, including the disputed classification of Human Resources/Payroll Clerk.

The Employer has a bargaining history with Union de Tronquistas de Puerto Rico, Local 901 IBT (herein referred to as Petitioner), for a unit of employees that includes all production and service employees, including warehouse personnel, service representatives, routemen and mechanics employed by the company at its facilities in Sabana Grande and Carolina, PR, and excluding all other employees, guards and supervisors as defined by the Act. The most recent collective bargaining agreement between Petitioner and the Employer was negotiated approximately 2-3 years ago.

The Employer's operations in Puerto Rico are overseen by a General Manager. The Employer neither employs a human resources manager, nor an office manager. The General Manager performs all tasks typically associated with an office manager, and oversees all collective bargaining, grievance processing and settlement, and all personnel/human resources actions. The General Manager does not have an executive secretary assigned. Besides the General Manager, the company employs other supervisors who oversee different aspects of production and related matters, but the person in charge of labor relations is the General Manager.

Aside from the disputed classification, the other classifications included in the petitioned-for Unit are: (1) the accounts payable clerk, (2) the accounts receivables clerk, (3) the receptionist, (4) the computer operator, and (5) the internal growth/service coordinator (IGSC).

B. The Human Resources/Payroll Clerk Duties

The job description for the HR/PC indicates that her responsibilities are:

- (1) to maintain employee files and records up to date;
- (2) file documents according to their respective categories and create employee files for new employees;
- (3) have all documents completed whenever a new employee is hired ahead of time;
- (4) keep all forms up to date, according to applicable laws (Workers Compensation, Family and Medical Leave Act, Maternity Leave, and others);
- (5) follow up with the Safety Program, through safety orientations and written information, as well as promoting and maintaining the safety committee;
- (6) assisting in the organization and coordination of activities that the company sponsors for its employees;
- (7) maintaining the Attendance Program up to date, and coordinating with the Department Managers the distribution of disciplinary measures applicable;
- (8) payroll keeping, and inputting payroll data into the company's payroll software systems and finalizing this process.

The job description also provides that the HR/PC shall manage sensitive human resources information as required. She shall also work in the coordination of random-drawn drug testing carried out by the company. The HR/PC also coordinates and schedules activities as required, and gathers information and photos of activities to be published in the company's corporate newsletter "The Green Banner." The HR/PC shall also work in the reconciliation of the company's bank accounts, and have them ready by no later than the 15th of each month.

In addition, the HR/PC signed a confidentiality agreement with the Employer that provides she will not reveal company secrets, financial information, clients lists, employees and company official names', employees' addresses, positions occupied by the different employees and company officials, compensation, pay and/or benefits of employees and company officials, merchandising plans, product costs, and services offered. The agreement provides that the HR/PC shall not use the confidential information either for personal gain, or for the benefit of any other entity or person. The HR/PC is the only clerical employee who was required to sign a confidentiality agreement with the company.

Pursuant to the testimony of Ms. Maria de L. Rodriguez, the General Manager, the main duties of the HR/PC involve time-keeper and payroll related functions. Thus, the HR/PC enters the data on the payroll system, having access to all employees' salaries and compensation benefits, including managers, but excluding the General Manager. She also follows through on attendance, notifying supervisors when employees have violated the company's established attendance policies, requiring discipline of the employee.

The HR/PC also has access to the employees' personnel files, and is responsible for filing documents in their files, including disciplinary actions.³ Occasionally, the HR/PC assists supervisors in the drafting of disciplinary memorandums, and types in handwritten disciplinary memorandums prior to their issuance to employees.

Although the safety committee does not meet frequently, the HR/PC has been delegated the responsibility of representing the company in any safety (security)

³ Both Ms. Rodriguez, the General Manager, and Ms. Alvarado, the HR/PC, testified concerning the personnel files. It was revealed that the personnel files are located inside Ms. Rodriguez's office, but that if Ms. Rodriguez is not in

committee meetings with the union representatives who represent the unit of production and service employees. Her role is to gather information on the company's behalf concerning employees' complaints on safety/security matters and relay this information to the respective supervisors so that they can take measures to address any safety deficiencies.

Also Ms. Alvarado, the HR/PC, participates once monthly in a human resources conference call with Ms. Rodriguez, the General Manager, and Ms. Debra Elliot, a Human Resources Manager in the Minneapolis, Minnesota Corporate Office. The content of these telephonic conferences varies, but it generally seems to concern issues with regard to timekeeping, payroll processing, changes to the different applicable laws and how that affects payroll, for example Family and Medical Leave Act. Also the parties may discuss changes to the payroll systems and upgrades.

The General Manager testified that because there is no office manager or executive secretary, she relies on the HR/PC for some labor/human resources related matters, and that there are no other employees that handle or assist her in labor related issues. If the HR/PC is absent, the General Manager absorbs her responsibilities on a temporary fashion, none of the other clerical/administrative employees is authorized to perform the functions of the HR/PC on even a temporary basis.

The HR/PC is directly supervised by the General Manager, and she does not report to anyone else if the General Manager is absent. The HR/PC is usually not present at either managerial meetings, or bargaining and grievance meetings with the Union. These tasks are directly and personally managed by the General Manager. The

the office, Ms. Alvarado may request access to the office for filling documents, and that Mr. Angel Medina, the Chief Engineer also has a key to Ms. Rodriguez's office.

HR/PC also does not investigate or help the General Manager in the processing of grievances. She also does not open the General Manager's mail.

Employer witness Caesario Martinez, a former General Manager in Puerto Rico for six years, but who left that position over fifteen (15) months ago, testified that while he was General Manager he was in charge of the Employer's campaign during the elections held about three (3) years ago for the production and service unit employees, as well as the ensuing negotiations with Petitioner. He stated that because the new General Manager (Ms. Rodriguez) has only been in that position for three (3) months, the corporate office has assigned to him the task of negotiating any collective-bargaining agreements with Petitioner on behalf of the Company, if Petitioner is ultimately certified as exclusive collective-bargaining representative of the petitioned-for Unit.

Mr. Martinez stated that while he speaks and understands Spanish, his Spanish skills are not advanced, and therefore while he was General Manager he often required the HR/PC's assistance with the translation of documents from English into Spanish and vice-versa. He stated that during both the past union organizing campaign and the negotiations, the HR/PC assisted him by translating his campaign and informational speeches from English into Spanish. Ms. Alvarado also translated bargaining minutes from Spanish into English for Mr. Martinez, while he was General Manager.

During the negotiations with Petitioner, the HR/PC assisted the General Manager by gathering data concerning average market salaries, competitive health insurance plans, and other information that management used to prepare proposals. However, the HR/PC did not assist in the preparation of company proposals.

Mr. Martinez also testified that Ms. Alvarado translated for him disciplinary memoranda that he prepared in English, into Spanish before distribution to the affected employee.

Although Ms. Alvarado did not specifically recalled this incident, Mr. Martinez stated that Ms. Alvarado helped him translate into Spanish a statement that he prepared for purposes of cooperating with the Region's investigation regarding an incident of alleged aggression against company managers by a union business agent.

Mr. Martinez testified that although he is no longer the General Manager for the company's operations in Puerto Rico, he is a mentor to the current General Manager, and he speaks to her at least twice a week, and expects the past assistance rendered by Ms. Alvarado concerning the translation of documents to continue, in further collective bargaining negotiations.

Ms. Alvarado testified that she has participated or sat in on some managerial meetings, but not meetings where all managers are present. She testified without ambiguity that she did not participate in any meeting among managers where labor relations strategies were discussed, and that she did not participate or attend any bargaining session between the Employer and Petitioner. The only meeting that was described with some specificity was a meeting held between Ms. Alvarado and Mr. Angel Medina, the Chief Engineer, and it concerned the discipline to a unit employee for attendance deficiencies. Ms. Alvarado was advising Mr. Medina that he was applying the attendance rules incorrectly. There were no other meetings of this kind described with specificity in the record.

IV. LEGAL ANALYSIS

"Confidential employees" are defined as employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations, or regularly substitute for employees having such duties. Under Board policy, they are excluded from the bargaining unit. Waste Management De Puerto Rico, 339 NLRB 262 (2003); Ladish Co., 178 NLRB 90 (1969); Chrysler Corp., 173 NLRB 1046 (1969); Eastern Camera Corp., 140 NLRB 569, 574 (1963); B. F. Goodrich Co., 115 NLRB 722, 724 (1956); Hampton Roads Maritime Assn., 178 NLRB 263 (1969).

However, the Board limits the application of the term "confidential" to only those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. This has been denominated the "labor nexus test". These considerations are to be "assessed in the conjunctive." Weyerhaeuser Co., 173 NLRB 1170 (1969). The party asserting confidential status has the burden of proof. Crest Mark Packing Co., 283 NLRB 999 (1987).

In Waste Management, supra, the Board noted that the "labor nexus" test excludes those employees whose access to confidential data involves merely access to confidential "business information." Stated differently, confidential access to non-labor related matters is irrelevant to the determination of whether a clerical employee is a confidential employee for purposes of the Act. Pursuant to the labor-nexus test, it is insufficient that an employee may on occasion have access to certain labor related or personnel type information. What the Board deems "confidential" instead is whether a

confidential employee is involved in a close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it. *Waste Management*, *supra* at 282.

For example, an employee's access to personnel records and the fact the employee can bring information to the attention of management, which may ultimately lead to disciplinary action by management, is not enough to qualify an employee as confidential. *RCA Communications*, 154 NLRB 34, 37 (1965); *Ladish Co.*, *supra*; *Hampton Roads Maritime Assn.*, supra. See also *S. S. Joachim & Anne Residence*, 314 NLRB 1191 (1994); and *Lincoln Park Nursing Home*, 318 NLRB 1160 (1995). In addition, a clerk who prepares statistical data for use by an employer during contract negotiations is not confidential because the clerk cannot determine from the data prepared by him what policy proposals may result (*American Radiator Corp.*, 119 NLRB 1715, 1720–1721 (1958)). Employees who handle material dealing only with the financial matters of the employer are not confidential. *Dinkler-St. Charles Hotel*, 124 NLRB 1302 (1959). *Brodart, Inc.*, 257 NLRB 380, 384 fn. 1 (1981).

Single incidents of note-taking or isolated occasions of confidential duties have been held insufficient to exclude an employee from a bargaining unit. *Crest Mark Packing Co.*, *supra*; *International Electric Assn.*, 277 NLRB 1 (1985). But, generally, the amount of time devoted to labor relations matters is not a controlling factor in establishing confidential status. *Reymond Baking Co.*, 249 NLRB 1100 (1980).

In this case, the Employer argues that the HR/PC position is confidential because the employee has access to all employee files, confidential wages, and benefits employees and is responsible for keeping track of the attendance records for all employees and is responsible for keeping track of the attendance program. However, the Board has ruled that the fact that some employees may be entrusted with business information to be withheld from their employer's competitors or that their work may affect employees' pay scales does not render such employees either confidential or managerial. Swift & Co., supra. In addition, the Board has held that timekeepers are not to be excluded from an appropriate unit as confidential employees where the record shows that, to the extent they have access to information of their employers, the information pertained to the performance of their duties as timekeepers and had nothing to do with the employers' labor policies. Moreover, if there is no evidence that the timekeepers otherwise participate in the formulation or effectuation of the employers' general labor policies, they are not to be found confidential. Hampton Roads Maritime Assn., supra.

In addition, the Employer argues that the HR/PC is a confidential position based on evidence that: (1) the HR/PC participates in a safety/security committee on behalf of the Employer with another supervisor and representatives of the production employees; (2) she translated documents for Cesario Martinez during a labor conflict between the Employer and Petitioner regarding the production employees; (3) participated in the compilation and analysis of health insurance providers during the negotiations; and, (4) she assists the supervisors in the drafting of disciplinary action to the employees.

These duties are insufficient to confer on the HR/PC confidential status. It is noted that the HR/PC participation in the safety/security committee meetings is limited to note taking and forwarding safety complaints to managers for their respective

address of the matter. The record was devoid of evidence that the HR/PC participated in meetings prior to, or succeeding the safety/security meeting where Management formulates and decides on a response concerning the issues presented.

The Employer's reliance on the translation duties performed by the HR/PC in the past is unpersuasive. The record showed that she may have translated some campaign documents and bargaining minutes for the former General Manager, Mr. Cesario Martinez. However, these functions have not been performed for over 15 months, when Mr. Martinez ceased to be the General Manager. There is no record that they were ever performed again either for his successor as General Manager, or for the current General Manager, Ms. Rodriguez. In fact these issues appeared to be so remote and unsubstantiated, that no documents or files were produced to show exactly what Ms. Alvarado translated.

The Employer's allegation that the HR/PC participation in the compilation and analysis of health insurance providers during the negotiations confers on her confidential status, is unavailing. As noted above, the Board has held that clerks who prepare statistical data for use by an employer during contract negotiations but who are not personally involved in the preparation of proposals are not confidential, as they have no knowledge of what proposals may result from their gathered data. *American Radiator Corp.*, *supra*.

Finally, with regard to the HR/PC assistance to supervisors or managers typing up disciplinary memorandums, it is also insufficient to confer confidential status. As stated in *Lincoln Park*, *supra* at 1164, "the typing of disciplinary matters, grievances, or

other material relating to personnel problems" does not of itself render an employee a confidential employee" within the meaning of Board law.

V. CONCLUSION

For the reasons stated above, I conclude that the Human Resources / Payroll Clerk classification (HR/PC) is not confidential and it is hereby included in the petitioned-for bargaining unit.

VI. THE UNIT

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time office clerical and administrative employees employed by the Employer at its facility in Carolina, Puerto Rico.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

There are approximately 6 employees in the appropriate bargaining unit.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Union de Tronquistas de Puerto Rico, Local 901, IBT. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees

who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*,

315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, La Torre de Plaza, Ste. 1002, 525 F.D. Roosevelt Ave., San Juan PR 00918-1002, on or before **August 17, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, **www.nlrb.gov**, by mail, or by facsimile transmission at (787) 766-5478. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to

⁴ To file the eligibility list electronically, go to <u>www.nlrb.gov</u> and select the **E-Gov** tab. Then click on the E-Filing link on the menu, and follow the detailed instructions.

potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **August 24, 2010**. The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov, 5 but may not be filed by facsimile.

Signed at San Juan, PR on this 10th day of August, 2010.



Marta M. Figueroa

Marta M. Figueroa

Regional Director, Region 24
National Labor Relations Board

La Torre de Plaza, Suite 1002

525 F.D. Roosevelt Avenue

San Juan, Puerto Rico 00918-1002

Website: www.nlrb.gov

H:\R24com\24 R Cases\24-RC-008674\RD Decision\DDE 24-RC-8674.doc

92-22-30 13:33

⁵ To file the request for review electronically, go to www.nlrb.qov and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.